



First Nations Clean Energy Network

**Submission to the Australian Law Reform Commission -
Review of the Future Acts Regime: Issues Paper**

February 2025



Table of Contents

Overview and background	2
About the First Nations Clean Energy Network	2
Overview of key issues relating to the Future Acts regime and clean energy projects	3
Conclusion	4

Overview and background

The [First Nations Clean Energy Network](#) welcomes the opportunity to provide a submission in response to the Australian Law Reform Commission's Review of the Future Acts Regime: Issues Paper (2024).

About the First Nations Clean Energy Network

The [First Nations Clean Energy Network](#) (the Network) is made up of First Nations people, groups, community organisations, land councils, unions, academics, industry groups, technical advisors, legal experts, renewables companies and others - working in partnership to ensure that First Nations share in the benefits of Australia's clean energy transition.

The Network is led by a [Steering Group](#) of First Nations leaders.

As a national, First Nations-led coalition, the Network aims to enable and empower First Nations to participate in, benefit from, respond to, and shape clean energy projects that impact their communities, land, waters and Sea Country.

The Network's approach is built on three pillars:

- **Community** The First Nations Clean Energy Network supports First Nations communities to shape the design, development and implementation of clean energy projects at every scale.
- **Industry partnerships** The First Nations Clean Energy Network acts as an innovation hub, promoting best practice standards and principles that companies should adopt and investors should require before committing capital to a clean energy project.
- **Policy reform** The First Nations Clean Energy Network advocates to lift significant federal and state regulatory barriers and stoke government investment, provide meaningful opportunities for energy security and clean energy generation for First Nations.

After being launched in November 2021 on Arrante country in Mparntwe (Alice Springs), the Network has learnt and achieved a lot since being launched, supported by our [Steering Group](#), our over-1000 First Nations members (individuals and organisations) and our thousands of other supporters.

Overview of key issues relating to the Future Acts regime and clean energy projects

The Network intends to provide a more fulsome response following publication of the Australian Law Reform Commission's Discussion Paper. For the time being, though, we note the following as key issues relating to the Future Acts regime relating to clean energy projects:

1. **Abolish Subdivision N.** The Network considers that there is no principled reason why the onshore and offshore should be treated differently, particularly as the distinction doesn't make sense where embayments are treated as 'onshore', while areas below the low water mark in ocean-facing coasts are treated as offshore. Native title holders are excluded from any input where is no right to negotiate in the offshore (which doesn't serve the interests of proponents, governments or native title holders).
2. **Abolish extinguishment of public works under Subdivision J.** Extinguishment under Subdivision J relies on 'operational inconsistency', whereas court authority has consistently been that extinguishment of native title must be assessed based on inconsistency of rights. If public works are constructed in a reserve that was granted prior to 23 December 1996 and the reserve itself didn't extinguish native title, it is contrary to the usual principle of inconsistency of rights if works constructed on the reserve now would extinguish native title
3. **Section 24KA requires clarification.** Section 24KA was only ever intended to apply to essential public works and infrastructure that only restrict/interfere with native title rights while the infrastructure was being built. Developments like large scale transmission lines were never intended to fall under s.24KA, as their large footprint means there are areas where native title rights cannot be exercised while the infrastructure is in place. Large scale infrastructure should require either the right to negotiate or an ILUA. The Network has previously published a discussion paper which included this recommendation (see [First Nations and the Clean Energy Transition: Emerging Issues in New Transmission Infrastructure](#)).
4. **Reverse the effect of the Full Federal Court's decision in Tjiwarl.** In Tjiwarl, the Full Court held that non-compliance with future act procedural requirements (other than the right to negotiate) would not mean the future act is done invalidly. Where notice and opportunity to comment are such meagre rights already, holding that affording these rights to native title parties by proponents/States is effectively optional seems unfair and unreasonable.
5. **Clarify that an ILUA is required for renewable energy generation and storage projects.** Clarify that development of renewable energy projects on native title land, regardless of what approvals are required (e.g. change to a pastoral lease purpose, etc.), requires an ILUA.

Conclusion

We thank the Australian Law Reform Commission for the opportunity to provide comments in response to the Issues Paper and look forward to engaging in the future with the Inquiry into the Future Acts Regime.

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